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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,694	04/09/2004	Christa Harris	THR-6198UTIL	1151

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ALLEGIANCE CORPORATION

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EXAMINER

ROANE, AARON F

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/821,694

Applicant(s)

HARRIS, CHRISTA

Examiner

Aaron Roane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/27/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities:

- On page 9, lines 9-11, the sentence “the advantages associated with second side transparency of the invention can be fully appreciated from the second side transparency alone” makes no sense because it contains circular reasoning.
- On page 10, line 11, please change “then” to --the--.

Appropriate correction is required.

Claim Objections

Claim 10 is objected to because of the following informalities:

claim 10 recites “a liquid mixture of sodium acetate trihydrate in an amount of about 73% of the total liquid volume and water in an amount of about 37% of the total liquid volume.”

Please change “37%” to --27%-- so that it conforms with the specification that recites “a mixture of sodium acetate trihydrate present in an amount of about 73% of the total liquid volume and water present in an amount of about 27% of the total liquid volume” on page 7, lines 7-9.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5-8 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Silver (USPN 5,897,580).

Regarding claim 1, Silver discloses a warming device (10) comprising: an exothermic thermochemical composition (26) wherein the exothermic reaction occurs upon activation; a flexible polymeric containment (10 composed of layers 12 and 14) for said thermochemical composition, said containment being structured to have a first skin-contacting side (12) and second transparent viewing side (14), each of said first and second sides having an interior surface and exterior surface; wherein said first skin-contacting side of said containment further comprises an outer fabric layer (30) attached onto said skin-contacting side surface, see col. 1-6 and figures 1-7.

Regarding claim 3, Silver further discloses said second viewing side is composed of a transparent polymeric material permitting viewing of the interior of said flexible polymeric containment, see col. 3, lines 6-19.

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Regarding claims 5 and 6, Silver further discloses the claimed invention, see col. 4, lines 38-56 and figure 7. Additionally, it should be noted

Regarding claims 7 and 8, Silver further discloses said outer fabric layer is composed of a non-woven material made from rayon, see col. 4, lines 38-46.

Regarding claims 11-15, Silver further discloses the claimed invention. In col. 4, lines 23-32, Silver incorporates by reference Stanley et al. (USPN 4,077,390), Fiedler (USPN 4,572,158) and Manker (USPN's 4,872,442, 4,880,953 and 5,058,563). Manker (USPN 4,872,442) discloses the claimed invention, see entire reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheney, III (USPN 5,143,048) in view of Silver (USPN 5,897,580) in further view of Manker (USPN 4,872,442).

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Regarding claims 1, 2 and 4, Cheney, III discloses an infant heel warming device (10) comprising: an exothermic thermochemical composition (15) wherein the exothermic reaction occurs upon activation, see col. 1-4 and figures 1-4. Cheney, III fails to disclose a flexible polymeric containment for said thermochemical composition, said containment being structured to have a first skin-contacting side and second transparent viewing side, each of said first and second sides having an interior surface and exterior surface; wherein said first skin-contacting side of said containment further comprises an outer fabric layer attached onto said skin-contacting side surface. Cheney, III also fails to disclose at least one securing strap is attached to said device to secure said device onto the foot. Silver discloses a warming device (10) comprising: an exothermic thermochemical composition (26) wherein the exothermic reaction occurs upon activation; a flexible polymeric containment (10 composed of layers 12 and 14) for said thermochemical composition. Silver teaches providing a containment being structured to have a first skin-contacting side (12) and second transparent viewing side (14), each of said first and second sides having an interior surface and exterior surface in order to locate the triggering element. Additionally, Silver teaches providing said first skin-contacting side of said containment with an outer fabric layer (30) attached onto said skin-contacting side surface in order to provide extra comfort to the user, see col. 1-6 and figures 1-7. Manker discloses an adhesive warming bag and teaches providing the bag (10) with at least one strap (14) in order to properly secure the bag to an infants foot, see col. 3 and figures 1-6. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Cheney, III, as taught by

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Silver, to provide a flexible containment being structured to have a first skin-contacting side and second transparent viewing side in order to contain the heating composition and in order to locate the triggering element, and as also taught by Silver, to provide the first skin-contacting side of said containment with an outer fabric layer attached onto said skin-contacting side surface in order to provide extra comfort to the user, and as finally taught by Manker, to providing the device with at least one strap in order to properly secure the bag to an infants foot.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silver (USPN 5,897,580) in view of Angelillo et al. (USPN 5,736,110).

Reby *Spac* Regarding claim 9, Silver discloses the claimed invention except for reciting the thermochemical composition comprises a liquid mixture of sodium acetate trihydrate and water. Silver does state "the chemical composition 26 may be any chemical or mixture of chemicals that undergoes an exothermic reaction. Preferably the exothermic reaction is reversible," see col. 4, lines 12-22. It is extremely well known in the art that sodium acetate trihydrate is used in thermal devices wherein the application of thermal energy is triggered by a physical activator. Angelillo et al. disclose a thermal device that is triggered and teach the use of super saturated sodium acetate trihydrate in order to provide reusable heating, see col. 6-11. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Silver, as

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is known in the art and taught by Angelillo et al., to use super saturated sodium acetate trihydrate in order to provide reusable heating.

Regarding claim 10, Silver in view of Angelillo et al. disclose the claimed invention.

Silver in view of Angelillo et al. is silent as to the ratio of sodium acetate trihydrate to water other than the sodium acetate trihydrate is super saturated (large amount of sodium acetate trihydrate to small amount of water). At the time of the invention, it would have been an obvious matter of design choice to one of ordinary skill in the art to use a mixture of sodium acetate trihydrate present in an amount of about 73% of the total liquid volume and water present in an amount of about 27% of the total liquid volume because Applicant has not disclosed this particular ratio provides an advantage, is used for a particular purpose, or solves a stated problem compared to a simple super saturated solution of sodium acetate trihydrate and water. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a simple super saturated solution of sodium acetate trihydrate and water or a mixture of sodium acetate trihydrate present in an amount of about 73% of the total liquid volume and water present in an amount of about 27% of the total liquid volume because they both provide the necessary reusable heat source though the physical activation of the trigger.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 7AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.R. *A.R.*
April 18, 2005

Roy D. Gibson
ROY D. GIBSON
PRIMARY EXAMINER